

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

DANIEL LEMBERGER,

Plaintiff,

v.

UNION PACIFIC RAILROAD
COMPANY,

Defendant.

Case No. 17-CV-649-JPS

ORDER

On May 5, 2017, the plaintiff filed a complaint pursuant to the Federal Employers' Liability Act, 45 U.S.C. § 51, alleging that he developed leukemia as a result of being exposed to toxic substances during his employment as a welder for the defendant, Union Pacific Railroad Company. (Docket #1 at 1-2). On June 12, 2017, the defendant filed a motion to dismiss the complaint for failure to state a claim, pursuant to Federal Rule of Civil Procedure 12(b)(6). (Docket #8). On July 6, 2017, in lieu of responding to the motion, the plaintiff filed an amended complaint. (Docket #14).¹ The defendant answered the amended complaint on July 20, 2017. (Docket #16). When an amended complaint is filed, it becomes controlling and the prior pleading is withdrawn. *Johnson v. Dossey*, 515 F.3d 778, 780 (7th Cir. 2008). Thus, the plaintiff's amended complaint governs this case,

¹Federal Rule of Civil Procedure 15 allows a party to "amend its pleading once as a matter of course within ... 21 days after service of a motion under Rule 12(b)[]." Fed. R. Civ. P. 15(a)(1). Here, the magistrate judge previously assigned to this case granted the plaintiff's motion to extend this deadline to July 7, 2017. (Docket #11).

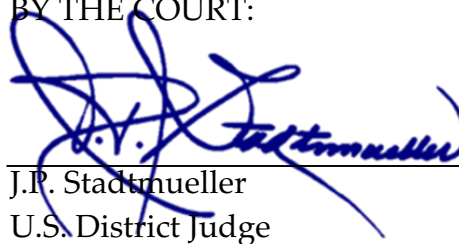
and the defendant's motion to dismiss the original complaint will be denied as moot.

Accordingly,

IT IS ORDERED that the defendant Union Pacific Railroad Company's motion to dismiss the complaint (Docket #8) be and the same is hereby **DENIED as moot and without prejudice.**

Dated at Milwaukee, Wisconsin, this 11th day of August, 2017.

BY THE COURT:



J.P. Stadtmueller
U.S. District Judge